IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4405 OF 2005
IN
APPEAL NO. 576 OF 2005

Abhijit Bhargav Kolwankar. ...Applicant
v/s.
The State of Maharashtra. ...Respondent

Mr.Ashok Mundargi with Mr.Madhav J. Jamadar for Applicant.
Smt.V.R. Bhosale, APP for State.

CORAM : D.G. DESHPANDE AND V.M. KANADE, JJ.

DATED : NOVEMBER 29, 2005

P.C. :-

. This application is filed by accused no.1 for grant of bail. His is convicted alongwith four others who committed the murder of 14 year old boy. The case of the prosecution is that all the five accused assaulted him, they beat him and poured kerosene on him and burnt him alive. The accused came to be convicted under Section 302 with Section 392 IPC on the basis of two dying declaration.

2. Mr.Mundargi argued for the accused, contended that the conviction is based on the dying declaration

and the dying declaration is highly suspicious because there are overwriting and change of dates. He tendered two Xerox copies of the dying declaration. Firstly, he has contended that the declaration has not been proved at all. Secondly, originally, the date was 8-5-03 but it was changed to 9-5-03 and therefore, the entire case of prosecution become suspicious and accused is, therefore, entitled for bail.

3. We do not find any merit in the submission. The two copies given to us are taken on record. They are for the purpose of reference marked as "A" and "B . On Copy "A" of the dying declaration, there is endorsement of the doctor about the capacity of the patient to give dying declaration and his fitness. On both the places, the Doctor has put his signature below the Certificate. The date and time of the dying declaration is 8-5-03 and the time is firstly appears to be 11.30 midnight or 12.30 midnight. In the certificate itself at the foot of the dying declaration "A", there is change of date 8 to 9. In the dying declaration "B", there is also date is written at the top right side corner. It appears to

have been changed from 8 to 9.

4. Admittedly, there are overwriting in the dying declaration. Date and time are changed to in the circumstance means natural. Because the incident of assault and burning of the young boy of 14 years has taken place on 8th May, 2003 after 9.30 p.m. Thereafter, the boy was admitted to the hospital and around midnight, dying declaration was recorded. So if it is recorded after 12 midnight, then the date changes according to English system and therefore, it appears that instead of 8, the date is written as 9. We brought this aspect of the matter to the notice of Mundargi. He had no answer to the same.

5. Dying Declaration "A" is supported by two certificates of the Doctor about the fitness of the boy. In the dying declaration Exhibit "B", recorded by the SEM, there is no certificate. But at this juncture, dying declaration "A" is a strong base of evidence and there is no suspicious circumstance. The overwriting or change of date and time does not create any doubt about

the prosecution case. The young boy has been brutally assaulted and burnt alive. Therefore, not a case for bail. Therefore, rejected.

(D.G. DESHPANDE, J.)

(V.M. KANADE, J.)